

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

TRANSCANADA USA SERVICES, INC.¹

Employer

and

Case 20-RC-18282

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION
1245,

Petitioner

DECISION AND DIRECTION OF ELECTION

TransCanada USA Services, Inc. (the Employer) employs and administers the payroll, benefits and human resources functions for approximately 1,700 field and administrative employees in the United States who are involved in the operation and maintenance of energy systems and facilities owned by the parent and sister companies of the Employer.² Included among these employees are approximately 55 employees (herein called the Unit employees) who maintain natural gas pipelines in the Western United States that are represented by Petitioner under a collective-bargaining agreement between the Employer and the International Brotherhood of Electrical Workers, Local 1245 (the Petitioner), effective from April 1, 2008, to March 31, 2012 (the Agreement).³

¹ The Employer's name appears as amended at the hearing.

² The Employer's parent company, TransCanada Corporation, is a Canadian holding company that develops natural gas pipelines, storage facilities and power generation facilities in North America. Through its subsidiary, TransCanada Pipelines Limited, TransCanada Corporation owns approximately 36,500 miles of natural gas pipeline in the United States and Canada.

³ The recognition section of the Agreement states that "the Company recognizes the Union as the exclusive representative of employees for whom the National Labor Relations Board certified the Union as such representative in Case No. 20-RC-4936, and Case 20-RC-16160, with modifications as mutually agreed to from time to time." The classifications listed in the wage table in the Agreement are as follows: multi-skilled technicians (primary stream-controls) (Levels 2, 3, 4 and 5), multi-skilled technician (primary stream-mechanical) (Levels 2, 3, 4 and 5, and also Level 4 (welding) and Level 5

By its amended petition, Petitioner seeks an *Armour-Globe*⁴ self-determination election to allow three unrepresented employees who work on a portion of gas pipeline called the Tuscarora pipeline (herein called the unrepresented Tuscarora employees), to vote as to whether they wish to be included in the existing bargaining Unit represented by Petitioner. The Employer contends that the petition should be dismissed as untimely because the parties agreed to exclude the unrepresented Tuscarora employees from the unit covered by the Agreement and the instant petition was filed during the term of the Agreement. The Employer also argues that the petition should be dismissed because a unit combining the unrepresented Tuscarora employees with the unit employees would be inappropriate and the only appropriate unit is one comprised of only the unrepresented Tuscarora employees. Petitioner takes a contrary position.

After carefully considering the record and the parties' positions, I find that there is no evidence that the parties have ever agreed to exclude the unrepresented Tuscarora employees from the Unit nor is here any evidence that the Petitioner has ever expressly agreed to refrain from seeking to represent these employees. Therefore, I do not find that the filing of the instant petition is untimely because it was filed during the term of the Agreement. Further, the record establishes that the unrepresented Tuscarora employees share a substantial community of interest with the employees in the existing Unit, and that, should the unrepresented Tuscarora employees vote to be included in the Unit, the resulting unit comprised of both groups of employees would be an appropriate unit for collective-bargaining purposes. Accordingly, I have decided to direct an *Armour-Globe* election, as set forth below.

(welding)); warehouse technician (Levels 1 and 2); utility workers (Levels 1 and 2), temporary helper and drafter; and Clerical Levels 1, 2, 3, 4 and 5, which include the job classifications of administrative clerks, senior administrative clerks, accounting clerks and secretaries.

⁴ *Armour & Co.*, 40 NLRB 1333 (1942); *The Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

STIPULATION

The parties stipulated, and I find, that the unrepresented Tuscarora employees do not hire, fire, discipline or otherwise affect the terms and conditions of employment of other employees, and are not supervisors within the meaning of Section 2(11) of the Act.

FACTS

As is relevant to the instant case, the Employer provides manpower and labor management services for field and administrative/clerical employees who maintain three segments of natural gas pipeline in the Western United States. Two of these pipelines are called the “GTN” and “North Baja” pipelines. The “GTN” pipeline runs for about 625 miles from the Canadian border at Sandpoint, Idaho, across Washington and Oregon, and down to Malin, Oregon, near the California border. The “North Baja” pipeline runs for about 150 miles in a north-south direction in Arizona near the California border. The unit includes about 41 field employees working on the GTN pipeline and about three employees working on the North Baja pipeline.⁵

The Tuscarora Pipeline. In approximately April 2007, the Employer took over the operation of about 240 miles of pipeline, called the Tuscarora pipeline, which runs from Malin, Oregon, across the northeastern portion of California, to near Reno, Nevada. On its northern end, at Malin, Oregon, the Tuscarora pipeline connects to the GTN pipeline maintained by field employees in the existing unit. The three unrepresented Tuscarora employees at issue include Electrical Instrumentation & Control Technicians (EI&Cs) Level 3, Josh Zimmerman and Mike Birkhimer, and Lead/EI&C Technician Level 5,

⁵ The Employer took over operation of the GTN pipeline from Pacific Gas & Electric Company (PG&E) in about 2004, and assumed the collective-bargaining agreement between PG&E and Petitioner, which was due to expire in 2005. The Employer and Petitioner thereafter negotiated a new collective-bargaining agreement effective from 2005 until March 31, 2008, which was the predecessor of the current Agreement. The recognition clause in the Agreement, as described in footnote 2 above, references NLRB Case Nos. 20-RC-4936, and 20-RC-16160, which were certifications of units of employees employed by PG&E covered by collective-bargaining contracts pre-dating the Employer’s takeover of the GTN pipeline from PG&E. The North Baja pipeline was also previously serviced by PG&E employees and PG&E had voluntarily recognized Petitioner as their representative in 2003, prior to the acquisition of that pipeline by TransCanada. By Letter Agreement #3, which is part of the Agreement, the Employer recognized Petitioner as the representative of the North Baja employees, and included them in the unit, but did not grant them all of the same terms and conditions of employment as applied to the GTN employees under the Agreement. The Letter Agreement #3 expires on March 31, 2012, and states that it is of no force and effect after that date.

Kevin Walker. The parties do not dispute that a fourth Tuscarora employee, Jake Derner, has been included in the bargaining Unit since 2007, and that the terms of the Agreement have been applied to him.⁶

Negotiations Over the Unrepresented Tuscarora Employees. According to Senior Human Resources Consultant Zwicker, who participated in the negotiations and signed the Agreement on behalf of the Employer, the parties discussed the unit placement of the three unrepresented Tuscarora employees both during and after contract negotiations, but were never able to reach an agreement on their unit placement. The unrepresented Tuscarora employees are neither included in nor expressly excluded from the unit description contained in the Agreement. After the Agreement was ratified, and prior to filing the petition in the instant case, Petitioner filed a unit clarification petition and an amendment of certification petition, both of which it withdrew.⁷

Job Titles, Skills, Training and Functions of the Unrepresented Tuscarora Employees and the Unit Employees. Two of the three unrepresented Tuscarora employees (Josh Zimmerman and Mike Birkhimer) are in the same job classification (EI&C 3). Human Resources Consultant Zwicker testified that Derner is also in this job classification. Unrepresented employee Kevin Walker is in a higher level/lead classification, EI&C 5. The job of the unrepresented Tuscarora employees and Jake Derner is to maintain the pipeline and compressor stations on the Tuscarora pipeline. Comparable positions in the Unit are called multi-skilled technicians-primary-stream, and multi-skilled technicians-primary-mechanical, levels 3 and 5, rather than EI&C

⁶ According to Senior Human Resources Consultant, Kelly Zwicker, when TransCanada acquired the Tuscarora pipeline in 2007, an outside contractor continued to service that pipeline until August 2007. When the Employer hired Jake Derner in September 2007, it agreed to include him in the unit because it knew he would be working alongside bargaining unit employees during at least the first few months of his employment. From September to December 2007, Derner did work on the GTN pipeline with unit employees at Klamath Falls, Oregon. During most of 2008, Derner worked alongside unit employees and the unrepresented Tuscarora employees on the construction of the Likely Compressor station on the Tuscarora pipeline. During the 12 months preceding the hearing, Derner had not worked on the GTN pipeline system. However, as discussed below, during this period, Derner, as well as the unrepresented Tuscarora employees, continued to have regular contact with unit employees and to share common supervision with them.

⁷ TransCanada USA Services, Case 20-UC-428, was filed by Petitioner on December 5, 2008, and withdrawn on February 19, 2009. TransCanada USA Services, Case 20-AC-62, was filed by Petitioner on February 18, 2009, and withdrawn on September 9, 2009.

technicians levels 3 and 5. Although the job titles of the unrepresented Tuscarora employees and the Unit employees, other than Derner, are different, both groups of employees possess the same job skills, receive substantially common training and perform virtually identical job functions.

Geographic Locations. The unrepresented Tuscarora employees and the Unit employees (including Tuscarora employee Derner), perform maintenance work over several hundred miles of natural gas pipelines and report to several different facilities that are geographically spread out along those lines. The unrepresented Tuscarora employees, Unit employee Derner, and Unit employees working on the southern section of the GTN pipeline, share some facilities near Malin, Oregon, where the Tuscarora and GTN pipelines meet. The main office for the GTN pipeline is located in Portland, Oregon; the main office for the North Baja pipeline is in Ehrenberg, Arizona; and the main office for the Tuscarora pipeline is located in Reno, Nevada. The Portland office is about 550 miles from the Reno office and about 1190 miles from the Ehrenberg office, while the Reno office is about 626 miles from the Ehrenberg office. However, the unrepresented Tuscarora employees and Unit Tuscarora employee Derner do not report to Reno or to any other single facility on a daily basis. For periodic team meetings, they may use telephonic conference calls or meet at Reno or at one of the other locations along the Tuscarora pipeline. Field employees in the bargaining Unit work on several different teams, each of which meets on a daily basis at a different maintenance base, before the employees travel out to remote locations to perform their work. For example, the Klamath Falls team meets at a maintenance base at Klamath Falls, Oregon; the Redmond team meets in Redmond, Oregon; and the North Baja team meets in Ehrenberg, Arizona.⁸ The Employer also has teams of Unit employees working in its “Northern Border” area who report to maintenance bases at Rosalia, Washington, and Sand Point, Idaho. Administrative/clerical employees in the Unit report to various administrative offices in the Northwest, such as those in Spokane, Washington and in Portland, Oregon.

⁸ This distance from Klamath Falls to Reno is about 270 miles; the distance from Redmond to Reno is about 423 miles; the distance from Ehrenberg, Arizona to Reno is approximately 625 miles; and the distance between Klamath Falls and Redmond is about 155 miles.

Management & Direct Supervision. The record shows that the unrepresented Tuscarora employees and Tuscarora Unit employee Derner share direct supervision and management with other Unit employees. The unrepresented Tuscarora employees and Derner are directly supervised by Jeff O'Donnell, the Employer's Facilities Maintenance Manager for the Western States/Southern Area, who also supervises approximately 19 out of the 56 Unit employees, who work on the GTN and North Baja pipelines.⁹ The Employer's Facilities Manager for the Western States/Northern Area, John Plaster, directly supervises 22 of the 56 Unit employees who work on teams that report to maintenance bases in Rosalia, Washington and Sand Point, Idaho. Both O'Donnell and Plaster report to the same upper-level managers. The remaining administrative/clerical employees work at facilities in the Northwest, including at Spokane and Portland, and report to different managers.

Wages & Benefits & Hours The unrepresented Tuscarora employees are paid under the same wage scale and receive similar benefits, which are different from those of Unit employees, including Tuscarora unit employee Derner.¹⁰ The record also shows that there are differences between the standby pay rates of Unit employees working on the GTN and North Baja pipelines. All of the unrepresented Tuscarora employees work four ten-hour shifts a week. The Agreement provides for eight-hour shifts for Unit employees, but it appears that Unit employees also work four-day ten-hour shifts. In this regard, Letter Agreement #3 provides that the North Baja employees are eligible for the four-day ten-hour shift schedule.

Overall Administration, Supplies, Equipment and Uniforms. The unrepresented Tuscarora employees and the Unit employees use the same human resources department and payroll department. Both groups use the same remote dispatch/gas control center,

⁹ These include nine employees on the Redmond team; six on the Klamath Falls team; three on the Ehrenberg team; as well as Tuscarora Unit employee Jake Derner. O'Donnell's office is located in Redmond, Oregon.

¹⁰ For example, the hourly wage for the EI&C Level 3 technician is about \$3.70 less than that of a unit employee in a comparable position under the Agreement, and there are also differences in overtime and standby pay rates applicable to the two groups. The unrepresented Tuscarora employees also participate in bonus and incentive programs that are not part of the benefits provided under the Agreement to Unit employees. Unit employees are not required to make medical co-payments, whereas unrepresented Tuscarora employees are required to make co-payments.

which is located in Houston, Texas, and controls the entire pipeline. Both groups also use the same training coordinator, excavation specialist, work scheduler and work planner. Both groups obtain supplies from the same warehouse in South Dakota and use the same fleet service, which maintains all of TransCanada's vehicles in the United States. Both groups also use similar equipment, which includes solar industrial turbines and valve operators. Facilities Manager O'Donnell testified that the major differences in the equipment used by the two groups is that the equipment used on the GTN pipeline tends to be larger with more horsepower and a bigger variety of vendors because the GTN pipeline is larger. The unrepresented Tuscarora employees and Unit employees wear similar uniforms and work badges.

Operational & Safety Procedures & Training. The unrepresented Tuscarora employees and the Unit employees, including Derner, follow the same Employer operating policies and safety procedures. O'Donnell testified that the unrepresented Tuscarora employees receive "essentially the same training," as Unit employees, except for some equipment-specific training. According to O'Donnell, the unrepresented Tuscarora employees have trained both on-the-job and at training conferences with Unit employees. For example, unrepresented Tuscarora employee Mike Birkhimer has attended various trainings with Unit employees at Klamath Falls and Redmond, and has also trained on-the-job for two weeks with a senior control technician/Unit employee at North Baja and with another Unit employee during the construction of the Likely Compressor Station on the Tuscarora pipeline

Functional Integration, Transfers, Contact & Interchange. O'Donnell testified that there have been no permanent transfers of employees between the Tuscarora and GTN and North Baja pipelines. In this regard, unrepresented Tuscarora employee Mike Birkhimer testified that he had bid on about six positions working on the GTN and/or North Baja pipelines, but had not been hired for any of those jobs.

The record shows that the unrepresented Tuscarora employees have regular contact with Unit employee Jake Derner, who works with them on the Tuscarora pipeline. According to Regional Manager O'Donnell, the unrepresented Tuscarora employees and Derner also have contact with other Unit employees on the Klamath team who work on the GTN pipeline, as a result of sharing certain facilities at Malin, Oregon,

where the two pipelines meet. O'Donnell further testified that Unit employees from the GTN pipeline have provided maintenance services on the northern part of the Tuscarora pipeline on about 40 occasions during the past year and have also provided such services further south along the Tuscarora pipeline on an as needed basis. However, according to O'Donnell, only on about four or five occasions during the past year have Unit employees actually worked side-by-side with unrepresented Tuscarora employees. O'Donnell testified that, during the past year, neither the unrepresented Tuscarora employees nor Jake Derner had worked on the GTN or North Baja pipelines because the workload for employees on the Tuscarora pipeline had been greater than that of the employees on the GTN or North Baja pipelines.

The record reflects that, on several occasions during the past three years, the unrepresented Tuscarora employees and Tuscarora Unit employee Derner have worked together with other Unit employees. For example, the record shows that, through much of 2008, when the Likely Compressor Station on the Tuscarora pipeline was being constructed, unit employees Tim Sedgwick, Shaun O'Neill and Ken Patzke worked side-by-side with the unrepresented Tuscarora employees and Derner. Unit employee Shaun O'Neill testified that, on two occasions in 2008, he was sent to work at the Radar Compressor Station on the Tuscarora pipeline and, in 2009, he welded exhaust pipes at the Shoetree Compressor Station on the Tuscarora pipeline. According to O'Neill, he continued to work with the unrepresented Tuscarora employees and Derner at the Likely Compressor station in 2009, in order to replace valves and deal with warranty issues there. About two years prior to the hearing, unrepresented Tuscarora employee Kevin Walker assisted the North Baja Unit employees on the North Baja pipeline construction project.

The unrepresented Tuscarora employees and Unit employees have regular contact by telephone and e-mail. Lead Kevin Walker participates in weekly phone conferences with other team leads in the Unit, in order to discuss operational and safety concerns and work progress. Team leads, including Walker, also talk to each by telephone a couple of times each week and exchange e-mails. The other unrepresented Tuscarora employees also communicate with Unit employees by telephone and e-mail on a weekly basis. For the past two years, unrepresented Tuscarora employee Mike Birkhimer has had regular

contact on a monthly basis with several Unit employees as a member of the Employer's safety committee, which alternates holding in-person meetings with conference-call meetings.

On a daily basis, all employees receive general announcements sent out by e-mail from the Employer regarding equipment issues, work progress and upcoming meetings and trainings. All Unit employees and the unrepresented Tuscarora employees also document incidents or anomalies they encounter on the Employer's Web-based tracking system with incident reports, and such reports are broadcast to all employees and managers.

ANALYSIS

The Timeliness of the Instant Petition. In the instant case, Petitioner seeks an *Armour-Globe* election to allow the unrepresented Tuscarora employees to vote on whether they wish to be included in the existing bargaining Unit represented by Petitioner. The Employer contends that the petition should be dismissed as untimely because the parties allegedly agreed to exclude the unrepresented Tuscarora employees from the Unit covered by the Agreement and the petition was filed during the term of the Agreement. Petitioner takes a contrary position.

The record does not support the Employer's contention that the *Armour-Globe* petition herein was untimely filed. Only when a contract contains an express promise by a union to refrain from seeking to represent unrepresented employees will an *Armour-Globe* petition filed during the term of the contract be barred as untimely. See *UMass Memorial Medical Center*, 349 NLRB 369 (2007). Here, the Agreement contains no express promise by Petitioner to refrain from representing the unrepresented Tuscarora employees. The testimony of the Employer's witness, Senior Human Resources Consultant Kelly Zwicker further confirms that the parties have never reached an agreement on the unit placement of the unrepresented Tuscarora employees either before or after ratification of the Agreement. Accordingly, in these circumstances, I decline to dismiss the petition as untimely.

The Community of Interest of the Tuscarora Unrepresented Employees. An *Armour-Globe* election permits unrepresented employees who share a community of

interest with union-represented employees to vote on whether they wish to be represented by that union in the same bargaining unit. The Employer argues that the petition should be dismissed because the unrepresented Tuscarora employees and the employees in the existing Unit do not share a sufficient community of interest to constitute an appropriate unit. Instead, the Employer contends that the only appropriate unit is one comprised solely of the unrepresented Tuscarora employees. Petitioner takes a contrary position.

The Board examines several factors to determine whether employees share a community of interest, including: management and supervision; skills, training and duties; geographic proximity; interchange, integration and contact; wages, benefits and hours; and bargaining history. See *Overnite Transportation Co.*, 322 NLRB 723, 724 (1996). The Board first considers the petitioned-for unit and whether that unit is an appropriate unit. If it is, the inquiry ends there. Only if the petitioned-for unit is not an appropriate unit does the Board examine alternative units urged by the parties. *Id.* at 723. The unit need not be the most appropriate unit but only *an* appropriate unit. *Id.*; see also *Home Depot USA*, 331 NLRB 1289(2000); *Alamo Rent-a-Car*, 330 NLRB 897 (2000); *PJ Dick Contracting*, 290 NLRB 150, 151 (1988).

Application of the community of interest factors to the record herein establishes a strong community of interest between the unrepresented Tuscarora employees and the Unit employees sufficient to support a finding that a unit combining the employees in the two groups would be an appropriate unit for collective-bargaining purposes. As shown above, employees in the two groups work under common supervision and overall management; possess the same skills, receive the same training, and perform the same job functions. The unrepresented Tuscarora employees work alongside Unit employee Jake Derner and share common facilities with the Unit employees who work on the GTN pipeline. While their work sites are geographically distant from those of many of Unit employees, the same geographic separation exists for Unit employees working on the GTN line and Unit employees working on the North Baja pipeline. The GTN and unrepresented Tuscarora employees and Derner work on the same integrated and contiguous pipeline system and the GTN Unit employees have even serviced the Tuscarora pipeline on numerous occasions during the past year. While the record shows no permanent interchange between the unrepresented and unit employees, it does reflect a

significant amount of temporary interchange between employees in the two groups during the past three years, as well as regular contact. The unrepresented Tuscarora employees, Derner, and all of the other Unit employees use the same gas control/dispatch system, supplier and fleet service. They also utilize the same human resources department and payroll system. Although the record shows that the unrepresented Tuscarora employees (with the exception of Unit Tuscarora employee Jake Derner) have different wages and benefits and a different bargaining history from the Unit employees, I do not find that such factors are sufficient to outweigh the substantial evidence supporting a finding of a strong community of interest between the employees in the two groups. Lastly, and most obviously, the fact that an employee working on the Tuscarora line with the unrepresented Tuscarora employees has been included in the unit and covered by the Agreement since 2007 strongly militates in favor of a finding of a community of interest between the remaining unrepresented Tuscarora employees and the employees in the Unit.

Accordingly, I find that an *Armour-Globe* election is appropriate in this case, as directed below.

CONCLUSIONS AND FINDINGS

Based upon the entire record, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is an employer as defined in Section 2(2) of the Act, is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.¹¹
3. The Petitioner is a labor organization within the meaning of the Act.

¹¹ The record reflects that the Employer has its principal place of business in Houston, Texas, and employs about 1,700 employees nationwide who work on energy systems and facilities owned and operated by its sister and parent companies. As indicated by the record, the natural gas pipelines that it services run across several states, including, but not limited to, Idaho, Washington, Oregon, California, Nevada and Arizona. The Employer employs and handles the payroll and other employment services for these employees. The record reflects that during the past calendar year, the Employer's gross revenue from the sale or performances of services directly to customers outside the State of Texas exceeded \$50,000. Based on such evidence, I find that the Employer is engaged in commerce and that it will effectuate the Act to assert jurisdiction in this case.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. I find that an *Armour-Globe* self-determination election is appropriate in the following Voting Group:

All currently unrepresented full-time and regular part-time electrical instrumentation & control technicians and electrical instrumentation & control technician/leads employed by the Employer on the Tuscarora pipeline; excluding all other employees, guards and supervisors as defined by the Act.

Those eligible to vote shall vote as set forth in the Direction of Election below. If a majority of valid ballots is cast for Petitioner, it will be taken to indicate the currently unrepresented employees desire to be included in the existing Unit currently represented by Petitioner under the Agreement. If a majority of valid ballots is not cast for representation, it will be taken to indicate that the currently unrepresented employees desire to remain unrepresented.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the Voting Group described above. These employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Electrical Workers, Local Union 1245 in the Unit covered by the Agreement or to remain unrepresented.

The date, time and place of the election will be specified in the notice of election that the Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the Voting Group who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote.

In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees in the Voting Group who are in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 20, 901 Market Street, Suite 400, San Francisco, CA 94103, on or before February 17, 2010. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website,

www.nlr.gov,¹² by mail, or by facsimile transmission at (415)356-5156. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Because the list will be made available to all parties to the election, please furnish a total of two copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by February 24, 2010.

The request may be filed electronically through E-Gov on the Board's web site, www.nlr.gov,¹³ but may not be filed by facsimile.

¹² To file the list electronically, go to www.nlr.gov and select the E-Gov tab. Then click on the E-Filing link on the menu. When the E-File page opens, go to the heading Regional, Subregional and Resident Offices and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the "Accept" button. The user then completes a form with information such as the case name and number, attaches the document containing the election eligibility list, and clicks the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.

DATED AT San Francisco, California, this 10th day of February 2010.

/s/ Joseph P. Norelli

Joseph P. Norelli, Regional Director
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

¹³ Electronically filing a request for review is similar to the process described above for electronically filing the eligibility list, except that on the E-Filing page the user should select the option to file documents with the Board/Office of the Executive Secretary.